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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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08/969,723 11/12/97 BEASLEY

D APXP111461

EXAMINER

DINH, D

ART UNIT	PAPER NUMBER
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2757

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DATE MAILED:

09/28/98

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

#### OFFICE ACTION SUMMARY

Responsive to communication(s) filed on \_\_\_\_\_  
 This action is FINAL.  
 Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

Claim(s) 11 - 37 is/are pending in the application.  
Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 Claim(s) \_\_\_\_\_ is/are allowed.  
 Claim(s) 17 - 37 is/are rejected.  
 Claim(s) \_\_\_\_\_ is/are objected to.  
 Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.  
 The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.  
 The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.  
 The specification is objected to by the Examiner.  
 The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).  
 All  Some\*  None of the CERTIFIED copies of the priority documents have been  
 received.  
 received in Application No. (Series Code/Serial Number) \_\_\_\_\_  
 received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

Notice of Reference Cited, PTO-892  
 Information Disclosure Statement(s), PTO-1449, Paper No(s). 5, 8  
 Interview Summary, PTO-413  
 Notice of Draftsperson's Patent Drawing Review, PTO-948  
 Notice of Informal Patent Application, PTO-152

**DETAILED ACTION**

The non-statutory double patenting rejection, whether of the obviousness-type or non-obviousness-type, is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 11-37 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 5,721,842. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims recited essentially identical elements performing the essentially same functions as claim 1 of U.S. Patent No. 5,721,842:

Claim 11 recites:	Claim 1 of 5,721,842:
programmable switch ...	central programmable switch
a first interface ...	a first signal conditioning
an onscreen programmingcircuit...	on screen programming circuit
a programmed microprocessor...	means for detecting ...
a second interface...	a second signal conditioning

Elements of independent claims 20, 26 and 32 are similarly correspond to elements of claim 1 of US patent 5,721,842 as above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dung Dinh whose telephone number is (703) 305-9655. The examiner can normally be reached on Monday-Thursday from 7:00 AM - 4:30 PM. The examiner can also be reached on alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess can be reached at (703) 305-4792.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-9600.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, DC 20231

**or faxed to:**

(703) 308-9051, (for formal communications intended for entry)

(703) 308-5359 (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).



Dung Dinh  
Primary Examiner  
September 16, 1998